

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In the Matter of)

Implementation of Section 9)
of the Communications Act)

MD Docket No. 94-19)

Assessment and Collection of)
Regulatory Fees for the 1994)
Fiscal Year)

To: The Commission

RECEIVED

APR - 7 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**JOINT COMMENTS OF THE
NAMED STATE BROADCASTERS ASSOCIATIONS**

The Arizona Broadcasters Association, the California Broadcasters Association, the Connecticut Broadcasters Association, the Georgia Association of Broadcasters, the Hawaii Association of Broadcasters, the Illinois Broadcasters Association, the Kansas Association of Broadcasters, the Maine Association of Broadcasters, the Maryland/District of Columbia/Delaware Broadcasters Association, the Massachusetts Broadcasters Association, the Michigan Association of Broadcasters, the Mississippi Association of Broadcasters, the Missouri Broadcasters Association, the Nebraska Broadcasters Association, the New Hampshire Association of Broadcasters, the North Dakota Broadcasters Association, the Oklahoma Association of Broadcasters, the Oregon Association of Broadcasters, the Radio Broadcasters Association of Puerto Rico, the Tennessee Association of Broadcasters, the Virginia Association of Broadcasters, the West Virginia Broadcasters Association and the Wisconsin Broadcasters Association (collectively, the

No. of Copies rec'd
List A B C D E

0+4

"Associations"), by their attorneys, hereby jointly submit their Comments in response to the Commission's Notice of Proposed Rulemaking, MD Docket No. 94-19, FCC 94-46, released March 11, 1994 (the "NPRM").

I. INTRODUCTION

1. The Commission has initiated this NPRM proceeding to begin implementation of Section 9 of the Communications Act of 1934, as amended, which authorizes the Commission to assess and collect annual regulatory fees from its licensees and permittees. In the NPRM, the Commission proposes to assess and collect the fee amounts established by the Schedule of Regulatory Fees set forth in Section 9. Under the Schedule, the fee amounts for commercial radio licensees will depend solely upon the designated class of the station involved. Fee amounts for commercial television licensees will vary depending on market size. These fee amounts are not insignificant and may be financially burdensome to many broadcasters, large and small. Although Section 9 does give the Commission discretion to waive, reduce or defer the payment of a fee,^{1/} the NPRM does not clarify the showing required for such waivers, reductions or deferments. Moreover, the NPRM proposes that only those broadcasters whose fee amounts are \$12,000 or more (i.e., certain commercial television licensees) may elect to pay their fees in two equal installments. The NPRM does not propose to allow other

^{1/} 47 U.S.C. Section 159(d).

broadcasters to pay by installment, even if a broadcaster is financially impaired.

2. The Associations urge the Commission to give closer scrutiny to the economic consequences of the regulatory fee program as proposed, and to adopt a program that does not unduly burden broadcasters, especially those broadcasters with a limited revenue base. If the regulatory fee program proposed by the NPRM is adopted, the public interest will undoubtedly be harmed because broadcasters will have less revenues at their disposal for investing in programming that meets the needs and interests of their individual communities. Accordingly, the Commission should adopt measures allowing it to generate the revenues required by Section 9 without a concomitant deterioration in a broadcaster's service to the public. Such measures would involve changes in the way the regulatory fees are assessed; the ability of a broadcaster to have a fee waived, reduced or deferred; and the ability for all broadcasters to pay their fees through regular installments, rather than in one lump annual payment.

II. ARGUMENT

A. THE COMMISSION SHOULD ASSESS FEES FROM RADIO LICENSEES BASED ON MARKET SIZE.

3. The Schedule of Regulatory Fees set forth in Section 9 of the Act, and proposed to be adopted by the NPRM, assesses fees from radio station licensees based simply on their class of operation. Such a means of assessing fees is neither fair nor equitable. Under such a scheme, radio stations in the same class will pay the same regulatory fee amount, despite huge differences

in their service areas and revenue bases. For example, a Class C FM station in Presque Isle, Maine (population 10,500), or Williston, North Dakota (population 12,500), will pay the same regulatory fee as a Class B or C FM station in New York City (population 7,396,800), Los Angeles (population 3,573,400) or Chicago (population 2,785,300) which has a potential audience of millions. To prevent such an inequity, the Associations urge the Commission to consider the market size of each broadcaster when determining the appropriate regulatory fee to be assessed. The smaller the market, the lower the fee should be. If the fees are not adjusted based on market size, smaller broadcasters may have to make operational cutbacks that ultimately will affect their level of service to the public. Such a result is clearly not in the public interest.

4. While the payment of regulatory fees by class of station is set out in the legislation, the Commission has been given the authority to waive or reduce these fees where such action would promote the public interest. As set forth below, radio stations are mandated by the Commission to serve the public interest, providing unique benefits through their news, public affairs and informational programming. By mandating that small radio stations pay fees equivalent to those paid by stations with far larger revenue bases, this public service will be imperiled. As the more rural, sparsely populated areas of the country have fewer radio services to begin with, the specter of imposing an additional financial burden on those few stations that do exist is one which should not be allowed by the Commission. Therefore,

the Commission should use its power to waive or reduce these fees, as a policy matter, for stations serving sparsely populated areas.

**B. THE USE OF MARKET RANKINGS TO ASSESS FEES
FROM TELEVISION LICENSEES IS UNFAIR TO
STATIONS NOT SERVING ADI METRO AREAS.**

5. Under the Schedule of Regulatory Fees, television licensees will be assessed a regulatory fee amount based on the ranking of the station's market. In the NPRM, the Commission proposes using the Arbitron Company's "Television Markets and Ranking Guide," which defines television markets by ADI, to determine a station's market rank.^{2/} Television ADI markets, however, often include rural, sparsely populated areas. Under the proposed payment scheme, stations in these areas would have to pay the same fee amount as a much larger station serving a major metropolitan area within the same ADI. Particularly egregious examples of this inequity include the Denver ADI which includes stations in Bozeman and Billings, Montana; and the Detroit ADI which includes stations located in the rural areas of Michigan's northern peninsula. Because stations in these less populated areas do not serve the ADI's metro area and are thus not reaping the same benefits as those stations which do serve the metro area, stations on the fringe of an ADI should not have to pay the same fee amount as those stations in the heart of the ADI's metro area. Accordingly, for purposes of assessing regulatory fees, the Commission should not count a station as

^{2/} NPRM, para. 69.

being in a ranked market unless that station serves the ADI's metro area.

**C. THE COMMISSION SHOULD GRANT WAIVERS,
REDUCTIONS OR DEFERMENTS BASED ON A
SHOWING OF FINANCIAL HARDSHIP.**

6. Section 9(d) of the Act states that "[t]he Commission may waive, reduce, or defer payment of a fee in any specific instance for good cause shown, where such action would promote the public interest."^{3/} Such a specific instance is where a broadcaster is serving a small market with limited revenues and the payment of a fee would be financially burdensome to the broadcaster. In such an instance, the collection of a fee would impair the broadcaster's service to the public. Because broadcasters are required to operate in the public interest,^{4/} and the payment of a regulatory fee would, in some cases, cause a degradation of service to the public, the Commission's authority to waive, reduce or defer the fees in such cases is clear.

7. Certainly, financial hardship should be considered good cause for a waiver, reduction or deferment of the fee. Particularly where a broadcaster is suffering financial hardship, the payment of the regulatory fee will inevitably cut into the broadcaster's ability to expend sums for producing and acquiring quality programming. Payment of the fees may even cause some

^{3/} 47 U.S.C. Section 159(d).

^{4/} From its inception, the Commission's licensing function has involved not only examination of technical facilities, but an evaluation of the broadcaster's ability to render the best practicable service to the community reached by his broadcasts. See NBC v. United States, 319 U.S. 190 (1943); FCC v. Sanders Bros. Radio Station, 309 U.S. 470 (1940).

financially troubled stations to go off the air, a result clearly not in the public interest. Therefore, if the public interest is to be served, those broadcasters who can demonstrate financial hardship should be granted a permanent or temporary waiver, reduction or deferment of their fees.

8. To demonstrate financial hardship, broadcasters should be allowed to provide, at their option, any evidence they have that will show financial difficulties sufficient to warrant a waiver, reduction or deferment. Such evidence would include tax records, unaudited balance sheets and any other financial statements that fairly and accurately depict financial distress. Of course, if a broadcast station is in bankruptcy, receivership or trusteeship, payment of the regulatory fees should be automatically waived as such status is a clear indication of financial hardship. Moreover, where financial hardship is the issue, the NPRM's proposal that any request for a waiver or reduction be accompanied by the appropriate regulatory fee simply makes no sense.^{5/} If a broadcaster is suffering financially, how can it reasonably be expected to pay the fee? Accordingly, the Commission must clarify the circumstances under which it will permit waivers, reductions or deferments of the fees, and make clear that requests based on financial hardship need not be accompanied by the fee. In addition, the Commission must clarify that the filing of a waiver, reduction or deferment request tolls the payment of the fee until the Commission issues a ruling on such request. If the Commission denies the request, the

^{5/} NPRM, para. 25.

Commission should allow an appropriate period of time for the payment to be made without penalty.

D. THE COMMISSION SHOULD ALLOW ALL BROADCASTERS TO PAY BY INSTALLMENT.

9. Section 9(f) of the Act states that the Commission "shall permit payment by installments in the case of fees in large amounts."^{6/} However, there is no guidance to be found in either Section 9 or its legislative history as to what constitutes a "large" amount. For broadcasters, the Commission has determined \$12,000.00 or more to be a "large" amount.^{7/} The NPRM proposes, therefore, that broadcasters whose fee amounts are \$12,000.00 or more may pay their fees in two equal installments. Under the Schedule of Regulatory Fees proposed to be adopted by the NPRM, this means that only UHF commercial television licensees in the Top 25 markets and VHF commercial television licensees in the Top 50 markets may pay their fees by installment. The public interest would be better served, however, if all broadcasters were allowed to pay by installments, thereby ensuring that broadcasters have sufficient funds year-round to produce and purchase programming that serves the needs and interests of their individual communities. Considering the potential negative impact the regulatory fees will have on service to the public, any increased processing burdens on the Commission which would be caused by installment payments should be viewed as negligible. Nevertheless, if the Commission finds

^{6/} 47 U.S.C. Section 159(f).

^{7/} NPRM, para. 31.

that installment payments for all broadcasters is not feasible, at least those broadcasters suffering financial difficulty should be allowed to pay by installment. Otherwise, the Commission may inadvertently push struggling broadcasters to financial ruin with the loss of on-air service. Certainly, such a result would not be in the public interest.

III. CONCLUSION

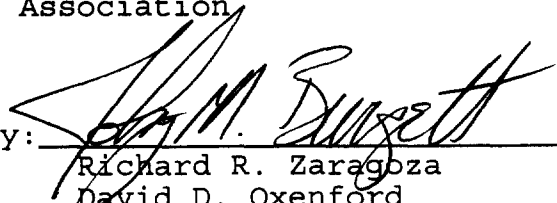
Accordingly, for the reasons set forth above, the Associations request that the Commission fully consider the public interest issues which are implicated by the assessment of regulatory fees, and take steps to ensure that its regulatory fee program does not unduly hinder a broadcaster's ability to provide quality service to the public. Such steps include assessing fees for radio broadcasters based on the market size of an individual broadcaster's station, rather than based on its class of operation; reducing fees for television licensees not serving the metro areas of their ADI market; clarifying that the Commission will permit waivers, reductions or deferments of the fees upon a showing of financial hardship; and allowing all broadcasters to pay their fees by installments.

Respectfully submitted,

The Arizona Broadcasters
Association
The California Broadcasters
Association
The Connecticut Broadcasters
Association
The Georgia Association of
Broadcasters
The Hawaii Association of
Broadcasters

The Illinois Broadcasters
Association
The Kansas Association of
Broadcasters
The Maine Association of
Broadcasters
The Maryland/District of
Columbia/Delaware
Broadcasters Association
The Massachusetts Broadcasters
Association
The Michigan Association of
Broadcasters
The Mississippi Association of
Broadcasters
The Missouri Broadcasters
Association
The Nebraska Broadcasters
Association
The New Hampshire Association
of Broadcasters
The North Dakota Broadcasters
Association
The Oklahoma Association of
Broadcasters
The Oregon Association of
Broadcasters
The Radio Broadcasters
Association of Puerto Rico
The Tennessee Association of
Broadcasters
The Virginia Association of
Broadcasters
The West Virginia Broadcasters
Association
The Wisconsin Broadcasters
Association

By:


Richard R. Zaragoza
David D. Oxenford
Francisco R. Montero
John M. Burgett

Their Attorneys

FISHER WAYLAND COOPER
LEADER & ZARAGOZA
2001 Pennsylvania Avenue, N.W.
Suite 400
Washington, DC 20006-1851
(202) 659-3494

Date: April 7, 1994

CERTIFICATE OF SERVICE

I, Denise Sullivan, a secretary in the law firm of Fisher Wayland Cooper Leader & Zaragoza, hereby certify that a copy of the foregoing "**JOINT COMMENTS OF THE NAMED STATE BROADCASTERS ASSOCIATIONS**" was served by hand delivery this 7th day of April, 1994, upon the following:

The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

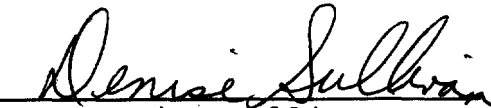
The Honorable James H. Quello
Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

The Honorable Andrew C. Barrett
Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554

Andrew S. Fishel
Managing Director
Federal Communications Commission
1919 M Street, N.W., Room 852
Washington, D.C. 20554

William E. Kennard, Esq.
General Counsel
Federal Communications Commission
1919 M Street, N.W., Room 614
Washington, D.C. 20554

Roy J. Stewart, Esq.
Chief, Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W., Room 314
Washington, D.C. 20554


Denise Sullivan